

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LARRY LAYMON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 05-cv-193
	)	
THE CANADA LIFE ASSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	

**MOTION FOR EXTENSION OF TIME TO RESPOND**  
**TO DEFENDANT'S MOTION TO DISMISS**

AND NOW, the Plaintiff by and through his attorneys, ELDERKIN, MARTIN, KELLY & MESSINA, file the following Motion for Extension of Time to Respond to Defendant's Motion to Dismiss, respectfully representing as follows:

1. On May 20, 2005, Plaintiff filed a Complaint against Defendant in the Erie County Court of Common Pleas, alleging generally, various causes of action arising out of Defendant's denial of Plaintiff's claim for long-term disability insurance benefits.
2. At the time the Complaint was filed, Plaintiff was represented by Jeff Connelly, Esquire (hereinafter referred to as "Attorney Connelly").
3. On June 21, 2005, the action was removed to the United States District Court for the Western District of Pennsylvania.

4. On July 11, 2005, Defendant filed a Motion to Dismiss and a brief in support thereof. A response to the Motion to Dismiss was to be filed by August 1, 2005.

5. On July 28, 2005, Attorney Connelly filed a First Motion for Extension of Time to respond to Defendant's Motion to Dismiss.

6. The Motion for Extension of Time was granted by The Honorable Sean J. McLaughlin on July 28, 2005. The Order granting the Motion for Extension of Time set a date of August 15, 2005 for Plaintiff to respond to Defendant's Motion to Dismiss.

7. On August 5, 2005, Attorney Connelly filed a Motion to Withdraw from Representation. The Motion to Withdraw was granted on August 9, 2005.

8. On August 10, 2005, Lori R. Miller, Esquire and Laura Steehler Nelson, Esquire entered an appearance on behalf of Plaintiff.

9. Plaintiff's new counsel has requested, but has not yet received, Plaintiff's administrative file from Defendant. Plaintiff's request for his administrative file was sent by facsimile to Defendant's current owner, Jefferson Pilot Financial Insurance Company. A true and correct copy of the request to Jefferson Pilot is attached hereto as Exhibit "A."

10. It is essential that Plaintiff receive Defendant's administrative file in order to determine the merits of the instant action because the "review of ERISA benefits denials is based on the record made before the plan administrator, and cannot be supplemented during litigation." Kosiba v. Merck & Co., 384 F.3d 58, 67 n.5 (3d Cir. 2004).

11. Upon receiving Defendant's administrative file, Plaintiff may move to amend his complaint to overcome the defects alleged in the Defendant's Motion to Dismiss, or consent to the Defendant's Motion to Dismiss.

12. The Plaintiff therefore respectfully requests this Honorable Court issue an order granting an extension of time until September 15, 2005, for Plaintiff to respond to Defendant's Motion to Dismiss, to allow Plaintiff to receive Defendant's administrative file and review the merits of the instant action.

13. Defendant, by and through its attorney, John P. Davis, III, has consented to this Motion for Extension of Time to Respond to Defendant's Motion to Dismiss. A true and correct copy of Defendant's consent is attached hereto as Exhibit "B."

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court enter an appropriate order granting Plaintiff an extension of time until September 15, 2005, for Plaintiff to respond to Defendant's Motion to Dismiss.

Respectfully submitted,

ELDERKIN, MARTIN, KELLY & MESSINA

By /s/ Lori R. Miller  
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